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No. 85-128

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

DONALD S. HOFFER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Can the implied acquittal doctrine prevent retrial on charges for murder, voluntary manslaughter, and involuntary manslaughter although there has been no acquittal and the jury found petitioner guilty on all counts in violation of state law?

Does collateral estoppel prevent that retrial although the multiple guilty verdicts were neither valid nor final because the underlying factual findings that petitioner possessed three distinct and mutually inconsistent mental states at the time he fired the single shot are legally inconsistent?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW ..	i
PRAYER	1
OPINION BELOW	2
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE PETITION:	
NEITHER THE IMPLIED ACQUITTAL DOCTRINE NOR COLLATERAL ESTOPPEL PREVENT RETRIAL WHERE THERE HAS BEEN NO ACQUITTAL AND NO VALID, FINAL JUDGMENT; THUS, THE PETITION DOES NOT DEMONSTRATE A CONFLICT, A CONSTITUTIONAL ERROR, OR AN UNFAIR RESULT TO JUSTIFY A GRANT OF REVIEW ..	3
CONCLUSION	6

TABLE OF AUTHORITIES

	PAGE
Ashe v. Swenson, 397 U.S. 436 (1970)	5, 6
Green v. United States, 355 U.S. 184 (1957) ...	4
Price v. Georgia, 398 U.S. 323 (1970)	4, 5

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PRAYER

The People of the State of Illinois ask this Court to deny the petition for a writ of certiorari to review the judgment of the Supreme Court of Illinois, which remanded this cause for a new trial because it does not present an issue worthy of review.

OPINION BELOW

The opinion below is reported at *People v. Hoffer*, 106 Ill.2d 186, 478 N.E.2d 335 (1985) and is attached to Hoffer's petition as Appendix B.

JURISDICTION

Hoffer invokes jurisdiction under 28 U.S.C. §1257(3) but, as the following argument demonstrates, Hoffer has not provided any reason for this Court to exercise its discretion to grant the petition for writ of certiorari.

STATEMENT OF THE CASE

A Kane County, Illinois jury found Donald Hoffer guilty of murder, voluntary manslaughter, and involuntary manslaughter, all in connection with the shooting death of Harold Peters. The trial court entered judgment on each verdict, then vacated the convictions for voluntary manslaughter and involuntary manslaughter and retained the judgment for conviction of murder and sentenced Hoffer to 20 years imprisonment.

On direct appeal, the Illinois Appellate Court, Second District, made a finding of inconsistent verdicts, reversed all the convictions, and remanded for a new trial.

The Supreme Court of Illinois granted leave to appeal and affirmed the judgment of the appellate court, reversing the circuit court and remanding for new trial. The court denied Hoffer's petition for rehearing. The mandate issued June 10, 1985.

Hoffer filed a petition with this Court July 19, 1985, seeking review therefrom.

REASONS FOR DENYING THE PETITION

NEITHER THE IMPLIED ACQUITTAL DOCTRINE NOR COLLATERAL ESTOPPEL PREVENT RETRIAL WHERE THERE HAS BEEN NO ACQUITTAL AND NO VALID, FINAL JUDGMENT; THUS, THE PETITION DOES NOT DEMONSTRATE A CONFLICT, A CONSTITUTIONAL ERROR, OR AN UNFAIR RESULT TO JUSTIFY A GRANT OF REVIEW.

Petitioner Donald Hoffer does not present an issue worthy of review. He has not demonstrated a conflict among jurisdictions, an error by the Illinois courts in interpreting the American Constitution, or an unjust result in his own case.

In the case at bar, the Supreme Court of the State of Illinois declared that the mental states involved in murder, voluntary manslaughter, and involuntary manslaughter are mutually inconsistent as a matter of state law. Thus, when an Illinois jury returns inconsistent guilty verdicts for murder, for voluntary manslaughter, and for involuntary manslaughter, a reversal and new trial on all counts must follow.

The Illinois courts have rejected Hoffer's contention that a retrial violates the implied acquittal doctrine and principles of collateral estoppel and therefore his right to be free from double jeopardy under the fifth amendment. The implied acquittal doctrine, as enunciated by this Court in *Green v. United States*, 355 U.S. 184 (1957) and *Price v. Georgia*, 398 U.S. 323 (1970), is not invoked in the facts at bar. Green had been found guilty of second degree murder but the jury was silent as to the charge of first degree murder. After an appeal wherein his conviction was reversed and the cause remanded for new trial, Green was subsequently found guilty of first degree murder. This Court held that the double jeopardy clause prohibited this second finding because the first jury had by its silence impliedly acquitted Green of murder in the first degree.

Price was charged with murder but found guilty of voluntary manslaughter. His jury was also silent as to the murder charge. After successful appeal, he was retried for murder, although the jury once again found only voluntary manslaughter. Nonetheless, retrial for murder violated the double jeopardy clause as in *Green* where the first verdict was by jury silence limited to the lesser offense.

But this didn't happen in Hoffer's case. There was no jury silence. There was nothing implied. Hoffer's jury declared him guilty of all three offenses. These verdicts are explicit convictions, not implicit acquittals. The Illinois court quite properly acknowledged the jury's express findings of guilt as to murder and voluntary manslaughter, refusing to participate in the fiction proffered by Hoffer that his jury implied his acquittal on those charges. Hoffer's suggestion was not rational.

This is consistent with both *Green* and *Price*. According to these cases, jeopardy ends with an acquittal—whether that acquittal is express or implied. *Price*, 398 U.S. at 329. But since Hoffer's jury did not acquit him on any count, the implied acquittal doctrine is not invoked. Until he is acquitted, Hoffer remains in jeopardy. Thus, the order of retrial on all counts is fair. Hoffer has cited no authority from any jurisdiction that has accepted his version of the implied acquittal principle. The People of Illinois suggest that this is because an attempt to extend to explicit but inconsistent guilty verdicts a rule that is premised on jury silence is patently not rational.

Therefore, there is no conflict among jurisdictions to be resolved, no misinterpretation of the Constitution to be corrected, and no unfair result to be prevented. Reliance on the implied acquittal provides no reason for this Court to accept review of this cause.

Hoffer's invocation of the doctrine of collateral estoppel is equally unavailing. The doctrine prevents any relitigation of ultimate issues of fact between the same parties once there has been a resolution by valid and final judgment. *Ashe v. Swenson*, 397 U.S. 436, 443 (1970). However, the guilty verdicts rendered at bar were neither valid nor final. The underlying factual findings on which the multiple verdicts were premised—that Hoffer possessed three distinct and mutually inconsistent mental states at the time he fired the single shot—are legally inconsistent, thus invalid and not final. The issue of the mental state, certainly an ultimate issue of fact, has not been resolved.

The Illinois court expressly rejected Hoffer's argument that the factual finding as to the mental state for involuntary manslaughter, i.e., that he acted unintentionally and recklessly, negated the factual findings that he acted with

intent or knowledge. This contention ignores actual factual findings to the contrary, and would result in a decision not based on realism and rationality as contemplated by *Ashe*, 397 U.S. at 444.

Once again, Hoffer cites not one case where the collateral estoppel doctrine has prevented retrial upon legally inconsistent verdicts. Since there is no conflict among jurisdictions for this Court to resolve, no misinterpretation of the Constitution for it to correct, and no unfair result for it to prevent, a claim resting on collateral estoppel provides no reason for this Court to intervene.

CONCLUSION

WHEREFORE, the People of the State of Illinois ask this Court to deny the petition for writ of certiorari to the Supreme Court of Illinois.

Respectfully submitted,

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